

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL ALLEN and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Jacksonville, Fla.

*Docket No. 96-2194; Submitted on the Record;
Issued September 10, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that he has a permanent impairment of the lower extremity entitling him to a schedule award under 5 U.S.C. § 8107.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained injury to his low back in the performance of duty on October 17, 1991. Appellant underwent a laminectomy on March 3, 1993. In a form report (Form CA-1303) the attending orthopedic surgeon, Dr. William G. Pujadas, indicated that appellant had a 25 percent permanent impairment of the leg due to sensory deficit, pain, or discomfort. He noted on the form report that the L5 and S1 nerve roots were affected. A treatment note of the same date reported occasional pain in the right leg, positive straight leg raises on the right, and complaints that the leg gives way due to weakness. In a brief report dated May 11, 1994, Dr. Pujadas stated that appellant had a 25 percent impairment to the body as a whole.

An Office medical adviser reviewed the record and provided an August 9, 1994 report, stating that occasional pain, positive straight leg raising, and weakness were not well described and did not constitute permanent impairments under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter the A.M.A., *Guides*). The medical adviser noted that under the A.M.A., *Guides*, the maximum impairment for sensory deficit or pain was five percent for each of the identified nerve roots, but no description was offered to evaluate the severity of the impairment. The medical adviser concluded that appellant had not established a ratable permanent impairment under the A.M.A., *Guides*.

By letter dated August 18, 1994, the Office asked Dr. Pujadas to review the Office medical adviser's comments and advise the Office if he concurred. In a report dated August 29, 1994, Dr. Pujadas again stated that appellant had a 25 percent impairment to body as a whole. Dr. Pujadas did make any reference to the A.M.A., *Guides*.

In a report dated September 26, 1994, a second Office medical adviser reviewed the medical evidence and opined that he was “unable to find any impairment of [appellant] due to pain or weakness of the L5 and S1 nerve roots.”

In a report dated February 13, 1995, Dr. Pujadas stated that appellant had a burning sensation in the buttocks and lower leg, as well as atrophy of the back and lower leg muscles, resulting from the employment injury. He also stated that appellant had additional complaints associated with decreased sensation of the leg. Dr. Pujadas again opined that appellant had a 25 percent permanent impairment to the body as a whole.

By decision dated July 25, 1995, the Office found that appellant was not entitled to a schedule award.

The Board has reviewed the record and finds that appellant has not established that he is entitled to a schedule award under 5 U.S.C. § 8107.

Section 8107 of the Federal Employees’ Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.¹ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.²

In this case, that attending physician, Dr. Pujadas, initially provided a form report dated May 3, 1994, indicating that appellant had a 25 percent impairment to the leg due to sensory deficit or pain. He did not, however, describe the impairment in detail or explain how the percentage of impairment was calculated. The May 3, 1994 treatment note indicated occasional pain and weakness in the right leg, but Dr. Pujadas did not provide a description of the impairment sufficient for an Office medical adviser to identify the degree of impairment under the A.M.A., *Guides*.³ His February 13, 1995 report noted complaints of decreased sensation in the leg, without providing further explanation as to the affected nerves or referring to the A.M.A., *Guides*. The Board notes that after initially finding a 25 percent impairment to the leg, in subsequent reports Dr. Pujadas reported a 25 percent impairment to the body as a whole. Neither the Act nor its regulations provide for a schedule award for impairment to the body as a whole or to the back.⁴

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.304(b).

² A. George Lampo, 45 ECAB 441 (1994).

³ The medical evidence required for a schedule award includes a detailed description of the impairment. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(c) (March 1995).

⁴ See James E. Jenkins, 39 ECAB 860 (1988); 5 U.S.C. § 8101(20).

The medical evidence was reviewed by two Office medical advisers, and neither found that the evidence was sufficient to establish a permanent impairment under the A.M.A., *Guides*. In the absence of a detailed description of a permanent impairment to an identified member of the body under 5 U.S.C. § 8107, the Board finds that appellant has not established entitlement to a schedule award in this case.

The decision of the Office of Workers' Compensation Programs dated July 25, 1995 is affirmed.

Dated, Washington, D.C.
September 10, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member